

1 Geana M. Van Dessel, WSBA #35969
2 KUTAK ROCK
3 510 W. Riverside Avenue, Suite 800
Spokane, WA 99201
Phone: (509) 252-2691

4 Adam E. Miller, MO Bar No. 40945 (*Pro Hac Vice*)
Michael W. Cromwell, MO Bar No. 70484 (*Pro Hac Vice*)
5 Susan L. Werstak, MO Bar No. 55689 (*Pro Hac Vice*)
CAPES, SOKOL, GOODMAN AND SARACHAN, PC
6 8182 Maryland Ave., Fifteenth Floor
St. Louis, Missouri 63105-3916
7 Phone (314) 754-4810

8 Thomas M. Goutman, PA Bar No. 30236 (*Pro Hac Vice*)
David. S. Haase, PA Bar No. 73835 (*Pro Hac Vice*)
9 Rosemary R. Schnall, PA Bar No. 73455 (*Pro Hac Vice*)
SHOOK HARDY & BACON LLP
10 2001 Market Street, Suite 3000
Philadelphia, PA 19103
11 Phone: (215) 575-3136

12 Richard L. Campbell, MA Bar No. 663934 (*Pro Hac Vice*)
SHOOK HARDY & BACON LLP
13 101 Federal Street, 19th Floor
Boston, MA 02110
14 Phone: (816) 559-4025

15 Attorneys for Defendants (Additional Counsel on Signature Page)

16 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

17 CITY OF SPOKANE, a municipal
corporation, located in the County of
18 Spokane, State of Washington,

19 Plaintiff,

20 v.

21 MONSANTO COMPANY, SOLUTIA
INC., and PHARMACIA
22 CORPORATION, and DOES 1 - 100,

23 Defendants.

24 Case No. 15-cv-00201-SMJ

Declaration of Geana Van Dessel
Re: Defendants' Opposition to Plaintiff's
Motions *In Limine*

1 Geana M. Van Dessel declares and states under penalty of perjury:

2 1. I am over the age of 18 and competent to be a witness herein. I am an
3 attorney for Defendants Pharmacia LLC (“Pharmacia” or “Old Monsanto”),
4 Monsanto Company (“New Monsanto”) and Solutia Inc. (“Solutia”) (collectively,
5 “Defendants”) in this matter. Except where indicated otherwise, I make this
6 declaration based on my own personal knowledge and the books and records of my
7 firm Kutak Rock LLP.

8 2. **Exhibit 1** includes true and correct copies of excerpts of the
9 deposition transcript of the videotaped Rule 30(b)(6) deposition testimony of the
10 City of Spokane, through its designee Marlene Feist, taken on July 16, 2019, at the
11 law offices of Kutak Rock at 510 West Riverside Avenue, Spokane Washington
12 before Certified Reporter Mona J. Nickeson, CRR, CLR, RPR, CCR. Exhibit 1
13 includes the following pages from the transcript: 1-2, 22, 23, 63, 65, 67-69, 76, 77,
14 89, 92, 93, 114, 115, 120, 163, 164, 177, 218, 309-319.

15 **Exhibit 1** also includes true and correct copies of excerpts of the
16 deposition transcript of the videotaped Rule 30(b)(6) deposition testimony of the
17 City of Spokane, through its designee Marlene Feist (Volume IV), taken on
18 September 17, 2019, at the law offices of Kutak Rock at 510 West Riverside
19 Avenue, Spokane Washington before Certified Reporter Amy J. Brown, RMR,
20 CRR, CCR. Exhibit 1 includes the following pages from the September 17, 2019
21 deposition: 1, 928, 929, 943.

22 3. **Exhibit 2** is a true and correct copy of an expert report proffered by
23 the City of Spokane in this captioned-case, written by J. Michael Trapp and Joel E.
24 Bowdan III, and dated October 11, 2019.

1 4. **Exhibit 3** is a true and correct copy of the following pages of
2 excerpted from the expert report in this captioned matter authored by Harry
3 Kytomaa, Ph.D., P.E., CFEI: i. – iv., 34, 38, 71-73.

4 5. **Exhibit 4** is a true and correct copy of the following pages of
5 excerpted from the expert report in this captioned matter authored by Maureen
6 Reitman, Sc.D.: 1-3, 16, 17.

7 6. **Exhibit 5** is a true and correct copy of a document Bates DEFEXP-
8 MR-00004656, also identified as Defendants' Trial Exhibit DX_20093.0001. The
9 document is a Navy Public Relations News Release regarding Navy E Awarded to
10 Monsanto.

11 7. **Exhibit 6** is a true and correct copy of a document Bates
12 HAGOV0001366-72, also identified as Defendants' Trial Exhibit DX_20088.0001
13 - 7. The document is a letter from Charles Belknap, of Monsanto, to the Secretary
14 of War and Advisory Commission to the Council of National Defense regarding
15 Application for Necessity Certificate WDN-2134 for Diphenyl Production
16 Facilities.

17 8. **Exhibit 7** is a true and correct copy of a document with Bates
18 HAGOV0001373-90, also identified as Defendants' Trial Exhibit DX_20089.0001
19 – 18, described at Recommendation Regarding Monsanto Application for
20 Necessity Certificate No. WDN-2134 for Diphenyl Production Facilities filed May
21 23, 1941.

22 9. **Exhibit 8** is a true and correct copy of a document with Bates
23 HAGOV0001404 - 1425, also identified as Defendants' Trial Exhibit

24

1 DX_20091.0001 – .0022, described as Monsanto Application for Necessity
2 Certificate No. 4121.

3 10. **Exhibit 9** is a true and correct copy of a document with Bates PCB-
4 ARCH0175366, also identified as Defendants' Trial Exhibit DX_20754, described
5 as a November 14, 1972, letter from U.S. Dept. of Commerce directing Old
6 Monsanto to accept purchase order for Aroclor 1242 "pursuant to Section 101 of
7 the Defense Production Act of 1950").

8 11. A copy of a November 17, 1972, letter in response from Monsanto,
9 indicating compliance with the directive but stating the company had otherwise
10 ceased selling PCBs "because of the increasing environmental concerns" is
11 attached as **Exhibit 10**. It is Bates PCB_ARCH0504468 – 504474, also identified
12 as Defendants' Trial Exhibit DX_20756.

13 12. **Exhibit 11** is a true and correct copy of a document with Bates
14 HAGOV0000158, also identified as Defendants' Trial Exhibit DX_20095,
15 described as a Nomination for the Renewal of the Army-Navy E Award to
16 Monsanto.

17 13. **Exhibit 12** is a true and correct copy of a document with Bates PCB-
18 ARCH0732574 – 576, also identified as Defendants' Trial Exhibit
19 DX_20772.0001 - .0003, described as an April 25, 1973, telex from Raytheon to
20 Monsanto re sale of Aroclor 1242, stating: "We also wish to acknowledge the fact
21 that Monsanto in all of our dealings has expressed a strong preference not to sell
22 this product to us and is proceeding with the sale only at the direction of the
23 government....".

1 14. **Exhibit 13** a true and correct copy of a document with Bates PCB-
2 ARCH0451797 - 451806, also identified as Defendants' Trial Exhibit
3 DX_20212.0001 - .0010, which is a copy of federal specification TT-P-28c for
4 heat-resisting aluminum paint, which lists Aroclor 1254.

5 15. **Exhibit 14** includes a true and correct copy of a transcript of
6 proceedings on June 25, 2015 in *Sydell Dublin, et al. v. Monsanto Co., et al.*,
7 Cause No. 10SL-CC-03822, Div. 12, in the Twenty-First Judicial Circuit Court of
8 the County of St. Louis, reported by Alicia A. Carter, RPR, CCR. This transcript of
9 proceedings is from Volume 14, Session B, and includes the direct and cross-
10 examination of Dr. Kaley. Counsel Thomas Goutman and Adam Miller
11 represented Monsanto and the Defendants in that case. Exhibit 14 includes the
12 following pages from the transcript 2727, 2760, and 2765.

13 16. **Exhibit 15** includes true and correct copies of excerpts of the
14 deposition transcript of deposition testimony of David Rosner, taken on December
15 10, 2019, in this captioned matter, at the Courtyard Marriott Central Park, 1717
16 Broadway, New York, New York, before Notary Public Joseph R. Danyo. Exhibit
17 2 includes the following pages from the transcript: 1-4, 28-34, 37-40, 189.

18 17. **Exhibit 16** is a true and correct copy of an August 24, 1970, letter
19 from Roderick A. Cameron, Executive Director of the Environmental Defense
20 Fund ("EDF"), to Pierre R. Wilkins, Manager of the Public Relations Department
21 of Monsanto Company, wherein Mr. Cameron, on behalf of the EDF, commends
22 Monsanto for its responses to information concerning PCBs in the environment.
23 This document is identified with Bates PCB-ARCH0620583 and Defendants' Trial
24 Exhibit DX_20522.0001.

1 18. **Exhibit 17** is a true and correct copy of excerpts of the videotaped
2 Rule 30(b)(6) deposition of the City of Spokane through its representative, Lars
3 Hendron, taken on June 7, 2019, in this captioned action, reported by Monna J.
4 Nickeson, CRR, CLR, RPR, CCR, at the law offices of Kutak Rock at 510 W.
5 Riverside Ave., Suite 800, Spokane, Washington, 99201. Exhibit 17 contains the
6 following pages of the transcript: 1, 2, 19, 24, 26, 33, 34, 45, 87, 89, 118, 130, 171,
7 191, 214, 215, 228, 372.

8 19. **Exhibit 18** is a true and correct copy of excerpts of the videotaped
9 Rule 30(b)(6) deposition of the City of Spokane through its representative, Marcia
10 Davis, taken on September 10 and September 11, 2019, in this captioned action,
11 reported by Brenda L. VanderWilde, CSR at the law offices of Kutak Rock LLP at
12 510 W. Riverside Ave., Suite 800, Spokane, Washington 99201. Exhibit 19
13 contains the following pages of the transcript: 1-3, 58-61, 63-65, 74, 75, 82, 87-89,
14 98, 100-102, 125-127, 131-134, 140-142, 176-179, 215-224, 228-231, 242, 244,
15 245, 260, 263, 271, 272, 352, 354.

16 20. Since 2016, Plaintiff has produced numerous iterations of a verified
17 response to Interrogatory No. 16 (from Pharmacia's First Amended Special
18 Interrogatories), concerning Plaintiff's alleged damages claim. Specifically,
19 Plaintiff served objections and responses on August 19, 2016, amended objections
20 and responses on March 21, 2017, and second amended ("First Supplement")
21 objections and responses on May 12, 2017. Those are found in the record at ECF
22 Nos. 157 and 157-1. In its First Supplement Plaintiff claimed total damages of
23 \$119,451,153.65.

24

1 21. Then on February 28, 2018, Plaintiff served its Second Supplement to
2 Plaintiff's Second Amended Objections and Responses to Pharmacia LLC's First
3 Amended Special Interrogatories (hereinafter "Second Supplement"). A complete
4 copy is found at Defendant Trial Exhibit DX_25130. True and correct copies of
5 excerpts (specifically, Interrogatory No. 16, Interrogatory No. 17 and Interrogatory
6 No. 19 along with Appendix A) from the Second Supplement are attached as
7 **Exhibit 19** to this declaration. In Appendix A, Plaintiff details its claimed damages
8 totaling \$283,678,610.46.

9 22. Next, on July 2, 2019, Plaintiff served its Third Supplement to
10 Plaintiff's Second Amended Objections and Responses to Pharmacia LLC's First
11 Amended Special Interrogatories (hereinafter "Third Supplement"), claiming total
12 damages of \$100,690,696.21. A complete copy of the Third Supplement is filed
13 with the Court as Exhibit 91 to the Declaration of Melissa Nott Davis Re:
14 Defendants' Statement of Material Facts Not in Dispute, and a complete copy is
15 found at Defendants' Trial Exhibit DX_ 24016.

16 23. Finally, on January 3, 2020, Plaintiff served its fourth model for its
17 alleged damages claims. That document, Bates PCB-SPOKANE-08180230 to -
18 08180315, is found at Exhibit 44 to the Declaration of Melissa Nott Davis Re:
19 Defendants' Statement of Material Facts Not in Dispute. The Fourth Model,
20 referred to as the "updated damages model" seeks total claimed damages of
21 \$88,617,861.20.

22 24. **Exhibit 20** is a true and correct copy of the excerpts of the transcript
23 of the videotaped deposition of Michael Coster taken in this captioned matter on
24 September 17, 2020, at the law offices of Kutak Rock at 510 West Riverside Ave.,

1 Suite 800, Spokane Washington 99201, by Amy J. Brown, RMR, CRR, CCR.

2 **Exhibit 20** includes the following pages excerpted from the transcript: 1, 20, 21,
3 84, 85.

4 25. **Exhibit 21** is a document produced by the City in discovery at PCB-
5 SPOKANE-08148163; it is a two-page spreadsheet purporting to calculate
6 projected NLT costs as part of the City's claimed damages.

7 26. Defendants disclosed as an expert Dr. David L. Sunding, Ph. D. on
8 November 15, 2019. **Exhibit 22** is a true and correct copy of the November 15,
9 2019, Rule 26 Report of David L. Sunding, submitted by Defendants in this
10 captioned-action.

11 27. Defendants disclosed as an expert Dr. Russell D. Keenan, Ph.D. on
12 November 15, 2019. **Exhibit 23** is a true and correct copy of the November 15,
13 2019, Rule 26 Report of Russell D. Keenan, submitted by Defendants in this
14 captioned-action.

15 28. **Exhibit 24** is a true and accurate copy of the U.S. Department of
16 Health and Human Services Agency for Toxic and Substances and Disease
17 Registry's Health Consultation Evaluation of Polychlorinated Biphenyls (PCBs) in
18 Fish From Long Lake, dated April 25, 2005, prepared by the Washington State
19 Department of Health.

20 29. Plaintiff disclosed as an expert Richard L. DeGrandchamp on October
21 11, 2019. **Exhibit 25** is a true and correct copy of the December 17, 2019, Rebuttal
22 Report of Richard L. DeGrandchamp, submitted by Plaintiff in this captioned-
23 action.

24

1 30. Defendants disclosed as an expert Dr. Paul D. Boehm, Ph.D. on
2 November 15, 2019. **Exhibit 26** is a true and correct copy of the November 15,
3 2019, Rule 26 Report of Paul D. Boehm, submitted by Defendants in this
4 captioned-action.

5 31. Plaintiff City of Spokane disclosed as an expert witness David Dilks,
6 Ph.D. of LimnoTech. **Exhibit 27** is a true and correct copy of the October 10,
7 2019, Rule 26 Report of David Dilks submitted by Plaintiff in this captioned
8 action.

9 32. Defendants disclosed as an expert Kurt Herman, M.Eng., P.G., with
10 Gradient. **Exhibit 28** is a true and correct copy of the November 14, 2019, Rule 26
11 Report of Kurt Herman submitted by Defendants in this captioned action.

12 33. Defendants disclosed as an expert John P. Woodyard, PE. **Exhibit 29**
13 is a true and correct copy of the November 15, 2019, Rule 26 Report of John P.
14 Woodyard, PE submitted by Defendants in this captioned action.

15 34. Defendants disclosed as an expert William H. Desvouges, Ph.D.
16 **Exhibit 30** is a true and correct copy of the November 15, 2019, Rule 26 Report of
17 William H. Desvouges, Ph.D. disclosed by Defendants in this captioned action.

18 35. **Exhibit 31** contains true and correct copies of ECF Nos. 1, 8 and 11
19 from *Sierra Club v. City of Spokane*, Case No. 2:08-cv-00283-LRS, from this
20 Court.

21 36. **Exhibit 32** contains true and correct copies of excerpts of the
22 deposition transcript of John P. Woodyard taken in this captioned action on
23 January 17, 2020, at 2001 Market Street, Suite 3000, Philadelphia, Pennsylvania

24

1 by Debra Sapiro Lyons, RDR, CRR, CRC, CCR, CLR, CPE. Exhibit 32 contains
2 the following pages excerpted from the transcript: 44-49, 51, 52, 149-154, 170.

3 37. **Exhibit 33** contains true and correct copies of excerpts of the
4 deposition transcript of Jack Vincent Matson, P.E., taken on September 9, 2016, in
5 the action captioned *Town of Westport, et al. v. Monsanto Co., et al.*, Civil Action
6 NO. 1:14-cv-12041-DJC, U.S. District Court for the District of Massachusetts,
7 reported by Stacey L. Daywalt. Exhibit 33 contains the following pages of the
8 excerpted transcript: 1-3, 10, 11, 77-87, 358.

9 38. **Exhibit 34** is a true and correct copy of JACK V. MATSON, EFFECTIVE
10 EXPERT WITNESSING, PRACTICES FOR THE 21ST CENTURY (5th ed. 2013). It was
11 originally published in 1990; its Fifth Edition was published in 2013.

12 39. **Exhibit 35** is a true and correct copy of excerpts of the deposition
13 transcript of Jack V. Matson, Ph.D., P.D., taken on July 12, 2019, in the case
14 captioned *San Diego Unified Port District, et al. v. Monsanto Corporation, et al.*,
15 Case No. 3:15-cv-00578-WQH-AGS. Exhibit 35 contains pages 1, 75, 94 and 271
16 of the transcript.

Respectfully submitted this 28th day of January, 2020.

By: s/ Geana M. Van Dessel
Geana M. Van Dessel, WSBA #35969
KUTAK ROCK
510 W. Riverside Avenue, Suite 800
Spokane, WA 99201
P: (509) 252-2691
Geana.VanDessel@KutakRock.com

Attorneys for Defendants Monsanto
Company, Solutia Inc., and Pharmacia LLC

CERTIFICATE OF SERVICE

I certify that on January 28, 2020, I caused the foregoing Declaration to be electronically filed with the clerk of the Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

s/ Geana M. Van Dessel
Geana M. Van Dessel, WSBA #35969
KUTAK ROCK
510 W. Riverside Ave., Suite 800
Spokane, WA 99201
Phone: (509) 252-2691
Geana.VanDessel@KutakRock.com

*Attorneys for Defendants Monsanto
Company, Solutia Inc., and Pharmacia LLC*